

Montana Code Annotated

Unlawful Transactions With Children

45-5-623. Unlawful transactions with children. (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if the person knowingly:

- (a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;
- (b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;
- (c) sells or gives an alcoholic beverage to a person under 21 years of age;
- (d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian; or
- (e) tattoos or provides a body piercing on a child under the age of majority without the explicit in-person consent of the child's parent or guardian. For purposes of this subsection, "tattoo" and "body piercing" have the meaning provided in 50-48-102. Failure to adequately verify the identity of a parent or guardian is not an excuse for violation of this subsection.

(2) A person convicted of the offense of unlawful transactions with children shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. (See compiler's comments for contingent termination of certain text.)

History: En. 94-5-609 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-609; amd. Sec. 2, Ref. 74, app. Nov. 7, 1978; amd. Sec. 4, Ch. 217, L. 1987; amd. Sec. 4, Ch. 448, L. 1989; amd. Sec. 1, Ch. 155, L. 1997; amd. Sec. 2, Ch. 391, L. 2003; amd. Sec. 16, Ch. 386, L. 2005.

Criminal Law Commission Comments:

Source: MNew.

This section is merely a partial recodification of a number of statutes on unlawful transactions with children. (See R.C.M. 1947, sections 94-35-106 to 94-35-106.2, 94-3702 and 69-1902.) Other statutes relating to children were repealed. (See R.C.M. 1947, sections 94-35-138, 94-35-137 and 94-35-208.) The substance of still other statutes relating to children [was] placed elsewhere in the code.

Compiler's Comments:

2005 Amendment: Chapter 386 in (1)(e) in first sentence at beginning after "tattoos" inserted "or provides a body piercing on", after "subsection" substituted ""tattoo" and "body piercing" have" for ""tattoo" has", and substituted "provided in 50-48-102" for "provided in 50-2-116"; and made minor changes in style. Amendment effective January 1, 2006.

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

2003 Amendment: Chapter 391 in (1)(e) at end of second sentence after "provided in" substituted "50-2-116" for "50-2-116(2)(k)(vi)". Amendment effective April 17, 2003.

1997 Amendment: Chapter 155 inserted (1)(e) relating to tattoos; and made minor changes in style. Amendment effective March 26, 1997.

1989 Amendment: In (1), at beginning, inserted exception clause citing 16-6-305; and made minor change in grammar.

1987 Amendment: In (1)(c) changed 19 to 21.

Applicability: Section 8, Ch. 217, L. 1987, provided: "The provisions of this act do not apply to persons who were born on or between April 1, 1966, and April 1, 1968."

Effective Date: Section 9(1), Ch. 217, L. 1987, provided: "This act is effective April 1, 1987."

Severability: Section 7, Ch. 217, L. 1987, was a severability section.

Annotator's Note: The area covered by subsection (1)(a) is uncertain in the absence of an applicable statutory definition of the word explosives, but the exception which allows municipalities to permit, under appropriate ordinances, the sale of explosives to minors, suggests that the framers intended to include even fireworks within the section's coverage.

Subsection (1)(b) replaces R.C.M. 1947, § 94-35-106 and expands the prior law's prohibition on the sale or gift of intoxicating liquor to minors to include the sale or gift of any intoxicating substance. The term "intoxicating substance" is defined by MCA, 45-2-101 to include both the alcoholic beverages described by R.C.M. 1947, § 94-35-107 and any other substance having an hallucinogenic, depressant, stimulating or narcotic effect.

Subsection (1)(c) was adopted following approval by the voters in the general election of November 7, 1978, of the constitutional amendment which raised the drinking age to 19 years or older. (See 1987 amendment note.) Subsection (1)(d) reenacts the prohibition on the purchase or acceptance of property from minors by pawnbrokers, second-hand dealers and junk dealers contained in R.C.M. 1947, § 94-3704. This section also lowers the age limit on the prohibition to 18 from 21 in accordance with the Constitutional requirement in Art. II, sec. 14.

Effective Date: Amendment proposed by Referendum 74 (Ch. 264, L. 1977) and approved at the general election held Nov. 7, 1978, was effective Jan. 1, 1979.

Cross References:

Adult rights, Art. II, sec. 14, Mont. Const.

Presumption of legal age to purchase alcoholic beverage -- defense for seller, 16-3-301.

Keg registration, 16-3-321.

Liability of one furnishing alcoholic beverage for injuries arising from event involving consumer, 27-1-710.

Definition of intoxicating substance, 45-2-101.

Definition of knowingly, 45-2-101.

Case Notes:

Intoxicating Beverage: In prosecution for violation of 94-35-106, R.C.M. 1947 (a forerunner of this section), corpus delicti was established by evidence that the defendant poured minor a drink from a bottle marked "Vodka". *St. v. Moore*, 138 M 379, 357 P2d 346 (1960).

Information charging defendant with selling intoxicating liquor to minor was sufficient even though it did not specify the kind of liquor furnished. *St. v. Baker*, 87 M 295, 286 P 1113 (1930).

Misrepresentation of Age: In a prosecution under 94-35-106, R.C.M. 1947 (a forerunner of this section) for furnishing liquor to a minor, misrepresentation of age by the minor was no defense, and it was immaterial what precautions defendant took to ascertain the buyer's age. *St. v. Paskvan*, 131 M 316, 309 P2d 1019 (1957).

License: In prosecution for selling intoxicating liquor to a minor, it was immaterial whether defendant was licensed under the alcoholic beverage laws, and amendment of information to insert allegation that defendant was an employee of a licensee was surplusage and not prejudicial to defendant. *St. v. Winter*, 129 M 207, 285 P2d 149 (1955).

Entrapment: Entrapment was no defense in a prosecution for selling liquor to a minor even though a public officer gave the minor money and instructed him to buy whiskey, whereupon the minor entered defendant's bar, offered to buy and was sold whiskey, where the officers did not induce the sale

by defendant or mislead him as to the minor's age. *St. v. Parr*, 129 M 175, 283 P2d 1086, 55 ALR 2d 1313 (1955).

Furnishing Liquor: Evidence that defendant poured drinks containing intoxicating liquor and set them out on a dresser in his hotel room and that a minor picked one up and consumed it supported conviction under 94-35-106, R.C.M. 1947 (a forerunner of this section). *St. v. Clark*, 87 M 416, 288 P 186 (1930).

Attorney General Opinions:

"Explosives" Not to Include Small Arms Ammunition or Fireworks: The term "explosives" in this section does not include small arms ammunition or fireworks permitted to be sold to the public under 50-37-104. 42 A.G. Op. 83 (1988).

Legal Age for Serving Alcoholic Beverages: A person who is 18 years of age may be employed as a bartender, waiter, or waitress to serve customers purchasing alcoholic beverages at retail. 38 A.G. Op. 15 (1979).

Collateral References:

Explosives key 1 through 5; Intoxicating Liquors key 159, 242; Pawn Brokers and Money Lenders key 11.

35 C.J.S. Explosives §§ 1, 2, 3, 6; 47 C.J.S. Interest and Usury § 365; 48 C.J.S. Intoxicating Liquors § 259; 48A C.J.S. Intoxicating Liquors § 380.

Prosecution of mother for prenatal substance abuse based on endangerment of or delivery of controlled substance to child. 70 ALR 5th 461.